

FILED

2008 DEC 22 P 1:32

PUBLIC UTILITIES
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)

PUBLIC UTILITIES COMMISSION)

Instituting a Proceeding to Investigate)
the Implementation Of Feed-in Tariffs)
_____)

Docket No. 2008-0273

HAIKU DESIGN AND ANALYSIS

PROPOSED PROCEDURAL ORDER

AND

CERTIFICATE OF SERVICE

Carl Freedman
Haiku Design & Analysis
4234 Hana Hwy.
Haiku, HI 96708

(808) 572-2519

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)	
)	
PUBLIC UTILITIES COMMISSION)	Docket No. 2008-0273
)	
Instituting a Proceeding to Investigate)	
the Implementation Of Feed-in Tariffs)	
_____)	

HAIKU DESIGN AND ANALYSIS PROPOSED PROCEDURAL ORDER

The initiating order in this docket provides that if a party is not able to stipulate to a proposed procedural order the party should file a proposed procedural order for the Commission's review and consideration. After several early, continued and diligent efforts by Haiku Design and Analysis (HDA) to resolve concerns with other parties regarding the issues and schedule of proceedings in this docket, including two proposals for a procedural schedule and several proposals regarding the list of issues in this docket (circulated to all parties) and participation in a teleconference with the parties, HDA is unable to agree to the proposals being considered by the parties as of the last date available for HDA to file a timely proposed procedural order.¹ Other parties may still be deliberating further regarding a stipulated procedural order.

HDA stresses here that it intends to abide by any procedural order issued by the Commission without complaint, without delaying this proceeding and without broadening

¹ HDA is located on the Island of Maui and files documents with the Commission by first class mail having no affordable practical alternative to deliver hard copy documents to the Commission. This proposed procedural order is being mailed by first class mail on Saturday morning December 20 with hopes that it is delivered to the Commission by the December 22 deadline for this filing.

the issues identified by the Commission for the proceeding. HDA cannot, however, honestly concur with or sign any of the current versions of the proposed stipulated procedural orders without bringing several matters to the attention of the Commission.

First is the fact that the proposed pace and deadlines set originally by the signatories to the October Energy Agreement and adopted by the Commission in its initiating order are not realistic. The proposed schedules put speed ahead of prudence and belie the parties' collective reluctance to question the deadlines in the Commission's initiating order in the face of sound reason.

Second is the fact that there are some fundamental uncertainties regarding the scope of this proceeding that should be explicitly framed and resolved by the Commission.

HDA'S PROPOSED PROCEDURAL ORDER

This proposed procedural order consists of whatever Stipulated Procedural Order is ultimately transmitted to the Commission that is signed by the Consumer Advocate with the exception of (a) the Exhibit A: Stipulated Regulatory Schedule and (b) several additions to the section "I. Statement of the Issues". An alternate Exhibit A: Stipulated Regulatory Schedule proposed by HDA is attached and discussed below. The proposed additions to the Statement of Issues are enumerated further below.

SCHEDULE OF PROCEEDINGS

The initiating order in this docket states that the parties' stipulated procedural schedule should, to the extent possible, allow the Commission to complete its deliberations and issue a decision by March 31. The ultimate objective for this schedule is to adopt a set

of feed-in tariffs and prices that implement the conclusions of the feed-in tariff investigation by July 2009.² The attached Exhibit A proposes a schedule of proceedings that results in a final implementation of feed-in tariffs by July 2009 but does not complete the initial phase of the proceeding (deciding the best approach to feed-in tariffs) until the end of May 2009, about two months after the March 31 deadline provided in the Commission's initiating order.

Upon the parties' examination of possible approaches to efficiently address the issues in the first phase of the overall investigation of feed-in tariffs it was suggested that "straw" tariffs should be proposed and considered in the initial phase of the overall investigation intended to be completed by March 31.³ This step was not previously contemplated until the second phase of the overall investigation (to consider and decide pricing and specific tariff terms by July 2009). This approach crams the bulk of the procedural process into the first phase of the investigation and leaves the second phase with a relatively lax pace. The schedule proposed herein by HDA pushes the March 31 deadline later by about two months to allow more time to deliberate the design and pricing issues while still meeting the ultimate July 2009 target deadline. This approach was proposed to other parties but was rejected out of hand since it did not comply with the March 31 deadline.⁴

HDA proposes this schedule here to suggest to the Commission that the March 31 deadline could be relaxed without delaying the ultimate outcome of the overall investigation

² Order Initiating Investigation at page 3.

³ This approach (considering straw tariffs and pricing in the initial phase of the investigation) is adopted in the latest versions of the stipulated procedural orders now being considered by all of the parties.

⁴ Some minor modifications have since been made to the schedule that incorporate some suggestions by some of the parties.

and would provide the parties with more time to address a challenging roster of issues and tasks. Without arguing in detail the merits of a slower procedural schedule for the first phase of this investigation, HDA points out that the HDA schedule (a) provides for realistic consideration of feed-in tariffs proposed by parties other than the joint proposal to be filed by HECO and the CA whereas the other schedules do not, (b) provides for more realistic formal discovery timing, (c) offers the Commission the opportunity for panel hearings if desired, and (d) identifies specific times that the Commission and its consultant could provide comments and information requests available to all parties.

HDA urges the Commission to carefully review the schedules proposed by the parties in light of the complexity of the issues in this docket and consider the importance of careful deliberation. HDA strongly advises prudence rather than haste. Things do need to move along with diligence but the stakes and the costs of getting things wrong are much higher in this docket than, for instance, the decoupling docket. Decoupling is an ostensibly revenue neutral adjustment to rate design that considers adjustments amounting to a few million dollars that can be revisited and reversed at any time by the Commission. The feed-in tariff docket, by comparison, considers entirely restructuring the basis for pricing and procuring long term fixed obligations amounting to hundreds of millions of dollars with the challenging objective of prospectively setting prices correctly to create a new, stable and productive yet cost effective market structure.⁵

⁵ Note that when asked in the Energy Efficiency Docket No. 05-0069 by the Commission's moderator how long it might take for the parties to complete an investigation to adopt a decoupling mechanism, the estimate of one year put forth by witness Carl Freedman was rejected by the Consumer Advocate and the HECO companies under oath as being far too fast for the complexity of the issues that needed to be considered and too challenging for the Consumer Advocate's work load. The feed-in tariff docket is broader in scope, more complex and involves higher stakes.

In the face of this challenge the Commission's scoping paper in this docket poses the question to the parties "Please explain the criticality of completing the "best-design" phase of this investigation by March 2009 and having project-based FiTs in place by July 2009 as called for in the Agreement." Perhaps before the Commission sets a schedule of proceedings in this docket the parties should be asked for a response to this question. HDA has heard no good answer to this question except the recital of the Commission's deadlines in the initiating order in this docket.

HDA notes that its proposed schedule has not been reviewed by the other parties for conflicts with other existing commitments on the Commission's or other parties' calendars.

HDA's schedule indicates that a more reasonable pace and sequence for the proceedings are possible without delaying the outcome of this investigation but further refinements are certainly possible. As a practical matter, HDA notes that the initial elements of all of the proposed schedules are essentially identical through the end of January. The Commission could, without delaying the docket, establish the early elements of the schedule, indicate to the parties what aspects of the remainder of the proposed schedule are preferred and allow the parties to refine dates accordingly.

ADDITIONS TO THE STATEMENT OF THE ISSUES IN THIS DOCKET

HDA proposes that the following issues be considered by the Commission to be included in the statement of the issues in this docket:

(1) Should feed-in tariffs be implemented for the HECO Companies?

(2) Should feed-in tariffs be based on renewable project costs or some other determining factor(s).

The two issues above are posed, as a practical matter, to obtain some resolution from the Commission on the extent to which parties should address the question of the merits of project-based feed-in tariffs versus other mechanisms to encourage adoption of renewable generation. There is fundamental disagreement between parties regarding whether these are issues in this docket and they are consequently omitted from the other proposed procedural schedules. Some parties say that it has already been determined that project-based feed-in tariffs will be adopted and that the purpose of this docket is limited to deciding the best mechanism. The Commission's scoping paper in several places suggests a broader view, that the merits of alternative approaches should be considered,⁶ although it is not clear whether this is intended to consider possible alternative outcomes or merely to establish a sound supporting evidentiary record. Clarity regarding the extent the parties should examine alternatives embodied in the two issues above would help focus the efforts of the parties in the docket.

(3) Are the impacts of proposed feed-in tariffs on the utilities and utility customers reasonable?

HDA proposed this issue to the parties but it was rejected and not included in the other drafts now being considered. One argument against including this issue was that it would be speculative to quantify rate impacts without knowing necessary information. It

⁶ See for example the discussion of "Other Incentives" on page 4 of the scoping paper.

was also argued to HDA that this issue could be considered in the context of pricing and consideration of caps.

HDA agrees that some aspects of this issue could be addressed under the auspices of other issues. HDA is alarmed, however, at the refusal of some principal parties to acknowledge cost impacts as a primary and fundamental issue in considering adoption of project-based feed in tariffs. In this docket the Commission is considering moving away from avoided costs (and competitive bidding as a way to determine reasonable and/or avoided costs) as the basis for determining pricing of new generation resources. For many years, avoided cost has been the index for determining the reasonableness of rate impacts and has been the “index” for cost effectiveness both in Commission practice and by statute.⁷

The index for pricing in establishing project-based feed-in tariffs is the cost of the renewable generation which may be higher than avoided costs. Abandoning the avoided cost standard begs the question of how the reasonableness of rate impacts will be determined. This is a fundamental issue. It is not explicitly identified in the other proposed procedural orders.

(4) What impacts will the implementation and ongoing regulation and administration of feed-in tariffs have on the staff and resource requirements of the Commission and Consumer Advocate.

This issue was suggested by HDA but not adopted in any of the current draft procedural orders being considered by the parties.

⁷ Hawaii’s renewable portfolio standard statute, for example, defines cost effective as at or below avoided cost and establishes cost effectiveness as a limit to what renewable generation must be acquired.

(5) The issues pertinent to Hawaii's utilities identified in the Commission's scoping paper filed in this docket dated December 11, 2008 are included in the scope of issues to be considered in this docket.

This provision was proposed by HDA but was rejected by some parties in favor of a more narrow restriction of issues (reflected in the other proposed procedural orders) to those questions posed in Appendix C of the scoping paper. This restriction omits several relevant issues including, for example, the issue of impacts on the utility and its customers outlined above. HDA sees no reason to be restrictive regarding including issues raised in the scoping paper. Indeed, scoping the issues to be addressed in this docket seems to have been one of the Commission's intended purposes for providing the scoping paper.

CONCLUSION

There is keen public interest regarding how the HCEI initiative generally and the Agreement in particular will be examined and whether there will, at some point, be a thorough examination of the merits to determine whether these far reaching initiatives are in the best interests of the State. Only some of the terms proposed in the Agreement will be decided in this docket but, both in sum and in all parts, it is important to address things properly and get things right. The ambitious timing deadlines and measures identified in the Agreement are valuable as objectives for decisive and deliberate action by state agencies. In the kuleana of the Commission, however, these provisions and deadlines must yield where necessary to the best judgment of the Commission where prudence and the Commission's duties dictate.

Dated: December 20, 2008; Haiku, Hawaii

Signed: CARL FREEDMAN
Carl Freedman
dba Haiku Design and Analysis

EXHIBIT A

**Stipulated Regulatory Schedule
Proceeding to Investigate the Implementation of Feed-In Tariffs
Docket No. 2008-0273**

	PROCEDURAL STEPS	DEADLINE
1.	HECO Companies and Consumer Advocate Filing to Describe Proposal on Key Feed-In Tariff Design Issues, Policies and Pricing Methodologies	December 23, 2008
2.	Parties' Comments to Commission Scoping Paper	December 31, 2008
3.	Respond to Commission Scoping Paper Appendix C Legal Questions	January 12, 2009
4.	HECO Companies and Consumer Advocate File Straw Tariff Sheets	January 14, 2009
5.	Technical Meeting to Explain Tariff Sheets	January 21, 2009
6.	Respond to Commission Scoping Paper Appendices A and C (Non-Legal Questions)	January 26, 2009
7.	Information Requests by All Parties, Commission (and Commission's Consultant if applicable) to HECO/CA Regarding Joint Proposal and Straw Tariff Sheets	January 28, 2009
8.	Responses to Information Requests	February 11, 2009
9.	All Parties' Opening Statements of Position Including Proposals for Feed In Tariff Designs, Policies and Pricing Methods	February 25, 2009
10.	Information Requests by All Parties to Parties' SOP's and Proposals and	March 11, 2009

	PROCEDURAL STEPS	DEADLINE
	Commission's Consultant's Comments and Information Requests Regarding SOP's and Proposals (if applicable)	
11.	Responses to Information Requests	March 25, 2009
12.	Technical Conference and Settlement Discussions Regarding All Parties' Proposals	April 1-2, 2009
13.	All Parties' Final Statements of Positions Regarding Feed In Tariff Designs, Policies and Specific Pricing Proposals	April 15, 2009
14.	All Parties' Replies to Final Statements of Position and Commission's Consultant's Comments on Final Statements of Position (if applicable)	April 29, 2009
15.	Panel Hearing (if desired by Commission)	May 6 - 8, 2009
16.	Commission Interim Decision Regarding Feed In Tariff Designs, Policies and Pricing Proposals	May 27, 2009
17.	HECO and CA Joint Filing of Proposed Tariffs Implementing Commission's Interim Decision	June 17, 2009
18.	Technical Conference On Proposed Tariffs	June 24, 2009
19.	Comments by Parties On Proposed Tariffs	July 8, 2009
20.	Replies to Comments	July 17, 2009
21.	Commission Adopts Feed In Tariffs	July 31, 2009

CERTIFICATE OF SERVICE

The foregoing Haiku Design and Analysis Proposed Procedural Order was served on the date of filing by first class mail, postage prepaid, and properly addressed or, as agreed by the parties in the deliberations regarding this matter, electronically transmitted to each such Party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPT OF COMMERCE & CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P.O. Box 541
Honolulu, Hawaii 96809

2 Copies
U.S. Mail and
Electronic Transmission

DEAN MATSUURA
MANAGER
REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

Electronic Transmission

JAY IGNACIO
PRESIDENT
HAWAII ELECTRIC LIGHT COMPANY, INC.
P. O. Box 1027
Hilo, HI 96721-1027

Electronic Transmission

EDWARD L. REINHARDT
PRESIDENT
MAUI ELECTRIC COMPANY, LTD.
P. O. Box 398
Kahului, HI 96732

Electronic Transmission

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
DAMON L. SCHMIDT, ESQ.
GOODSILL, ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, Hawaii 96813

Electronic Transmission

ROD S. AOKI, ESQ.
ALCANTAR & KAHL LLP
120 Montgomery Street

Electronic Transmission

Suite 2200
San Francisco, CA 94104
MARK J. BENNETT, ESQ.
DEBORAH DAY EMERSON, ESQ.
GREGG J. KINKLEY, ESQ.
DEPARTMENT OF THE ATTORNEY GENERAL
425 Queen Street
Honolulu, Hawaii 96813
Counsel for DBEDT

Electronic Transmission

CARRIE K.S. OKINAGA, ESQ.
GORDON D. NELSON, ESQ.
DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
530 South King Street, Room 110
Honolulu, Hawaii 96813

Electronic Transmission

LINCOLN S.T. ASHIDA, ESQ.
WILLIAM V. BRILHANTE JR., ESQ.
MICHAEL J. UDOVIC, ESQ.
DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF HAWAII
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

Electronic Transmission

MR. HENRY Q CURTIS
MS. KAT BRADY
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, Hawaii 96817

Electronic Transmission

MR. CARL FREEDMAN
HAIKU DESIGN & ANALYSIS
4234 Hana Highway
Haiku, Hawaii 96708

Electronic Transmission

MR. WARREN S. BOLLMEIER II
PRESIDENT
HAWAII RENEWABLE ENERGY ALLIANCE
46-040 Konane Place, #3816
Kaneohe, Hawaii 96744

Electronic Transmission

DOUGLAS A. CODIGA, ESQ.
SCHLACK ITO LOCKWOOD PIPER & ELKIND
TOPA FINANCIAL CENTER
745 Fort Street, Suite 1500

Electronic Transmission

Honolulu, Hawaii 96813
Counsel for BLUE PLANET FOUNDATION

MR. MARK DUDA
PRESIDENT
HAWAII SOLAR ENERGY ASSOCIATION
P.O. Box 37070
Honolulu, Hawaii 96837

Electronic Transmission

MR. RILEY SAITO
THE SOLAR ALLIANCE
73-1294 Awakea Street
Kailua-Kona, Hawaii 96740

Electronic Transmission

JOEL K. MATSUNAGA
HAWAII BIOENERGY, LLC
737 Bishop Street, Suite 1860
Pacific Guardian Center, Mauka Tower
Honolulu, Hawaii 96813

Electronic Transmission

KENT D. MORIHARA, ESQ.
KRIS N. NAKAGAWA, ESQ.
SANDRA L. WILHIDE, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, Hawaii 96813
Counsel for HAWAII BIOENERGY, LLC
Counsel for MAUI LAND & PINEAPPLE COMPANY, INC.

Electronic Transmission

MR. THEODORE E. ROBERTS
SEMPRA GENERATION
101 Ash Street, HQ 12
San Diego, California 92101

Electronic Transmission

MR. CLIFFORD SMITH
MAUI LAND & PINEAPPLE COMPANY, INC.
P.O. Box 187
Kahului, Hawaii 96733

Electronic Transmission

MR. ERIK KVAM
CHIEF EXECUTIVE OFFICER
ZERO EMISSIONS LEASING LLC
2800 Woodlawn Drive, Suite 131
Honolulu, Hawaii 96822

Electronic Transmission

JOHN N. REI
SOPOGY INC.
2660 Waiwai Loop
Honolulu, Hawaii 96819

Electronic Transmission

GERALD A. SUMIDA, ESQ.
TIM LUI-KWAN, ESQ.
NATHAN C. NELSON, ESQ.
CARLSMITH BALL LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813
Counsel for HAWAII HOLDINGS, LLC, dba FIRST WIND HAWAII

Electronic Transmission

MR. CHRIS MENTZEL
CHIEF EXECUTIVE OFFICER
CLEAN ENERGY MAUI LLC
619 Kupulau Drive
Kihei, Hawaii 96753

Electronic Transmission

MR. HARLAN Y. KIMURA, ESQ.
CENTRAL PACIFIC PLAZA
220 South King Street, Suite 1660
Honolulu, Hawaii 96813
Counsel for TAWHIRI POWER LLC

Electronic Transmission

SANDRA-ANN Y.H. WONG, ESQ.
ATTORNEY AT LAW, A LAW CORPORATION
1050 Bishop Street, #514
Honolulu, HI 96813
Counsel for ALEXANDER & BALDWIN, INC.,
Through its division, HAWAIIAN COMMERCIAL & SUGAR COMPANY

Electronic Transmission

Dated: December 20, 2008; Haiku, Hawaii

Signed: CARL FREEDMAN
Carl Freedman
dba Haiku Design and Analysis